Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N–01–38 OF 2005
JAMES FOONG, LOW HOP BING AND SURIYADI JJCA
25 JULY 2007

Land Law — Acquisition of land — Award — Objection against award — Application for extension of time to make objection — Whether application founded on sufficient grounds — Whether special circumstances existed

The appellant was the registered proprietor of Perhentian Tinggi Estate. On 7 June 2002, the respondent issued an intended acquisition notice to acquire part of the estate land. After an enquiry on 3 July 2002, the respondent issued a Form H which offered the appellant an award of RM898,500 as compensation. Under s 38 of the Land Acquisition Act 1960 ('the Act') the appellant had to issue a Form N within six weeks from the date of the award in the event the appellant objected to the award. On 6 August 2002, the respondent forwarded five copies of Form N to the appellant to be completed and returned. But the respondent did not mention the forms had to be returned within six weeks from the date of the award. The appellant failed to do so within the time period stipulated. The appellant filed an application to the High Court to enlarge time under s 38(4) of the Act to file the Form N. The High Court dismissed the application with costs. The appellant appealed to the Court of Appeal.

Held, dismissing the appeal:

(1) For the appellant to succeed it had to establish that there existed special circumstances to warrant the court to exercise that discretion. In a word the onus was on the appellant. The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly (see para 8).

(2) Nothing was included within the four walls of s 16 or in Form H that the land administrator was under a duty to inform the appellant of the submission of Form N. That being so the land administrator was blameless as it had complied with all the statutory requirements (see para 10).

(3) The wordings of s 38 and Form N were crystal clear in that the onus was on the appellant to do the needful, and for the land administrator to comply with the directions of the appellant, after having received the completed form. A cursory glance of the provision of s 38(1) as printed in the supplied Form N would have alerted the reader to the statutory requirements. Either the appellant was just too indolent to read the contents of the form, or after reading it and being overly confident, had ignored it (see paras 12 & 14).

(4) Mere complaints of not being informed of the deadline could not fall within the periphery of 'special circumstances'. This was no ordinary appellant. It was a company that had been incorporated in the United Kingdom and an established and reputable legal firm to represent it in court. It was not the run of the mill simple minded villager, who could not appreciate why and how his ancestral land had been taken away, but a sophisticated globe trotting company with the resources to acquire professional advice at the snap of its hypothetical fingers (see paras 18–19).

(5) The appellant's representative who attended the inquiry was not a mere clerk or a typist in the appellant's employment, but its very own estate manager. No one who has risen to the ranks of an estate manager of an international company could be said to be short of intelligence let alone experience. It was his duty to advise his company as to the next step to be undertaken, and not, on account of his own inadequacies, to pass the blame on the respondent who was not duty bound to help out. The existence of a rule, that ignorance of the law does not excuse, did not help the appellant's predicament either (see para 20).

(6) A difference in valuation made by the Government's valuer and a private one does not qualify as special circumstance as it was just a straight forward financial dissatisfaction (see para 21).

[Bahasa Malaysia summary

Perayu merupakan tuanpunya berdaftar Estet Perhentian Tinggi. Pada 7 Jun 2002, responden mengeluarkan satu notis pemerolehan yang bertujuan untuk memperoleh sebahagian daripada estet tanah itu. Selepas siasatan pada 3 Julai 2002, responden telah mengeluarkan Borang H yang menawarkan perayu award sebanyak RM898,500 sebagai pampasan. Di bawah s 38 Akta Pengambilan Tanah 1960 ('Akta tersebut') perayu hendaklah mengeluarkan satu Borang N dalam tempoh enam minggu daripada tarikh award sekiranya perayu membantah award tersebut. Pada 6 Ogos 2002, responden telah mengemukakan lima salinan Borang N kepada perayu untuk dilengkapkan dan dikembalikan. Namun responden tidak menyatakan borang-borang tersebut hendaklah dikembalikan dalam tempoh enam minggu daripada tarikh award tersebut. Perayu telah gagal untuk berbuat demikian dalam tempoh masa yang ditetapkan. Perayu telah memfailkan satu permohonan ke Mahkamah Tinggi untuk melanjutkan masa di bawah s 38(4) Akta tersebut untuk memfailkan Borang N. Mahkamah Tinggi telah menolak permohonan tersebut dengan kos. Perayu telah mengemukakan rayuan ke Mahkamah Rayuan.

Diputuskan, menolak rayuan tersebut:

(1) Untuk perayu berjaya ia perlu membuktikan bahawa terdapat keadaan istimewa untuk mewajarkan mahkamah menggunakan budi bicara itu. Dalam erti kata lain beban terletak ke atas perayu. Budi bicara yang perlu digunakan oleh mahkamah bukanlah mutlak dan tidak bersyarat dan perlu digunakan dengan berhati-hati (lihat perenggan 8).

(2) Tiada yang terangkum dalam s 16 atau dalam Borang H bahawa pentadbir tanah mempunyai kewajipan untuk memaklumkan perayu tentang penyerahan Borang N. Oleh demikian pentadbir tanah tidak boleh dipersalahkan kerana ia telah mematuhi kesemua keperluan statutori (lihat perenggan 10).

(3) Susunan kata-kata s 38 dan Borang N amat jelas bahawa beban adalah terletak ke atas perayu untuk berbuat yang perlu, dan pentadbir tanah hendaklah mematuhi arahan perayu, setelah menerima borang yang telah dilengkapkan itu. Melihat peruntukan s 38(1) sepintas lalu seperti yang tertera dalam Borang N yang diberikan sepatutnya telah menyedarkan pembaca tentang keperluan statutori tersebut. Sama ada perayu malas membaca kandungan borang itu, atau selepas membacanya dan menjadi terlalu yakin, telah tidak mengendahkannya (lihat perenggan 12 & 14).

(4) Aduan semata-mata bahawa tidak dimaklumkan mengenai tarikh akhir tidak terangkum dalam periferi 'special circumstances'. Di sini bukan perayu biasa. Ia sebuah syarikat yang telah ditubuhkan di United Kingdom dan sebuah firma guaman yang kukuh dan mempunyai nama baik untuk mewakilinya di mahkamah. Ia bukan penduduk kampung biasa yang menjalankan kilang, yang tidak akan menghargai kenapa dan bagaimana tanah nenek moyangnya telah diambil, tetapi sebuah syarikat terkenal yang canggih dengan sumber untuk mendapat nasihat profesional dengan memetik jari secara hipotetikalnya (lihat perenggan 18–19).

(5) Wakil perayu yang menghadiri siasatan itu tidak bekerja sebagai seorang kerani atau jurutaip untuk perayu, tetapi merupakan pengurus estetnya. Tiada sesiapa yang berada dalam jawatan pengurus estet sebuah syarikat antarabangsa boleh dikatakan kurang cerdik atau tidak berpengalaman. Adalah kewajipannya untuk menasihati syarikatnya berhubung langkah seterusnya untuk diambil, dan bukan, berdasarkan ketidakmampuannya, untuk menyalahkan responden yang tiada tanggungjawab untuk membantu. Kewujudan suatu rukun, iaitu kejahilan undang-undang bukan suatu alasan, juga tidak membantu keadaan sukar perayu (lihat perenggan 20).

(6) Perbezaan dalam penilaian yang dibuat oleh penaksir Kerajaan dan yang diupah secara persendirian tidak menjadikannya suatu keadaan istimewa kerana ia hanyakah satu ketidakpuasan kewangan yang biasa (lihat perenggan 21).]

Notes

For cases on award of acquisition of land, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1797–1840.

Cases referred to

Lai Tai v The Collector of Land Revenue [1960] MLJ 82 (refd)

Loh Swee Pau v Pentadbir Tanah Daerah Pontian [1998] 1 LNS 102 (refd)

Mohd Saperi Mohd Nasir lwn Pentadbir Tanah Daerah Alor Gajah [1997] 5 MLJ 800 (refd)

Senapi bin Long dan satu yang lain lwn Pentadbir Tanah Daerah, Langkawi, Kedah [1994] 1 MLJ 459 (refd)

Sungei Bongkah Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda [1995] 1 CLJ 400 (refd)
Ting King Yii @ Ting King Yu & 17 Ors v Minister for Resource Planning & Anor [1994] 4 CLJ 435 (refd)

Legislation referred to
Federal Constitution art 13(1), (2)
Land Acquisition Act 1960 ss 16, 37, 38(1), (3)(a), (4), Forms H, N

Appeal from: Originating Motion No 25–2 of 2003 (High Court, Seremban)

Balwant Singh (Balwant Singh & Co) for the appellant.
Legal State Adviser, Kamar Penasihat Undang-Undang Negeri Sembilan for the respondent.

Suriyadi JCA (delivering judgment of the court):

[1] This appeal pertained to a failed application to obtain an enlargement of time, under s 38(4) of the Land Acquisition Act 1960 ('the Act'), to enable the appellant to file Form N pursuant to s 38(1) of the Act.

[2] The appellant was the registered proprietor of Perhentian Tinggi Estate which consisted of Lots 1303 and 1322, Mukim Pedas, District of Rembau, Negeri Sembilan. On 7 June 2002 the respondent had issued an intended acquisition notice, with Lot 1322 measuring 8.094 hectares to be the intended acquired land. After the enquiry was held on 3 July 2002 the respondent had issued Form H which had offered the appellant an award amounting to RM898,500 as compensation.

[3] This service of Form H was a statutory requirement as s 16 of the Act states:

> 16. Service of award
>
> (1) On making any award under subsection (1) of s 14 in respect of any scheduled land the Collector shall prepare and serve on each person interested in such land a notice in Form H.
>
> (2) Every notice in Form H shall include an extract from the written award of the Collector in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

[4] Even though the appellant in situ had received the offer under protest, and had indeed informed the respondent of the objections, it had merely indicated that objection in Form H. Objections as to its sufficiency are permitted as s 37 of the Act allows it, and in this case, on the amount of the compensation. What the appellant had to do further was to notify the respondent that it had objections and the matter be referred to the court. That notification had to be in a written application and in a particular form ie Form N. Thereafter only shall that completed Form N be forwarded to the court by the land administrator. This was a requirement under s 38(1) which reads:

A 38(1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination, and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the Court.

(2)….

B (3)Every application under subsection (1) shall be made—

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under section 14.

C

[5] The failure to fill in the form, and to send it within the prescribed period of 6 weeks was a procedural insufficiency, which could be rectified conditional on court's interference. Section 38(4) reads as follows:

D The period of six weeks prescribed by paragraph (a) of subsection (3) and the periods of six weeks and six months prescribed by paragraph (b) of subsection (3) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

[6] Subsequently, on 6 August 2002, the respondent had taken the helpful step of E sending five copies of Form N to the appellant to be completed and returned together with a deposit of RM3.000. Regretfully the covering letter of the respondent did not mention that the forms had to be returned within six weeks from the date of the award. In the meanwhile, the appellant instead of returning the completed Form N had concentrated on preparing a valuation report of the acquired land. Upon receiving the valuation report, dated 9 September 2002, the appellant was F informed that the difference between the valuation figure and the award offered was RM1,240,802. Having consulted solicitors, the appellant alleged that they found for the first time of the requirements of the above mentioned s 38 of the Land Acquisition Act 1960. It then on 6 January 2003 filed an originating motion at the Seremban High Court seeking an enlargement of time of two weeks from the date G of the High Court's order to file the impugned Form N. It was unsuccessful as the High Court dismissed it with costs. Hence this appeal.

[7] The appeal heard by us started off with the acceptance by both parties that an objection to the award of the land administrator required the submission of Form N H to the respondent within six weeks from the date of the award.

[8] It is the law that a court has the discretion to enlarge that period as prescribed by s 38(3)(a) of the Act (see *Penang Development Corporation v Collector of Land Revenue Penang & Anor* [1976] 1 MLJ 89; *Senapi bin Long dan satu yang lain lwn* I *Pentadbir Tanah Daerah, Langkawi, Kedah* [1994] 1 MLJ 459). For the appellant to succeed it had to establish that there existed special circumstances to warrant the court to exercise that discretion. In a word the onus was on the appellant. The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly (*Sungei Bongkah Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda* [1995] 1 CLJ 400; *Loh Swee Pau v Pentadbir Tanah Daerah Pontian*

[1998] 1 LNS 102). Needless to say the failure to satisfy the High Court that such special circumstances existed had caused it to reject the abridgment application. A

[9] Having sifted the evidence we were satisfied that the trial judge had not erred in holding that the grounds proffered by the appellants could not be described as special circumstances. Before us the same arguments were ventilated eg the non-notification of the dateline for appeal by the respondent, a commission of a bona fide mistake on its part/ignorance of law, undue hardship to the appellant, and no fault on the part of the appellant. B

[10] The facts were not disputed that the appellant had informed the respondent of its objection to the award. It had signed and returned to the respondent the statutory Form H which expressly stated that the appellant was accepting the award under protest. From this the complaints began to froth from the appellant that it was not informed by the respondent of the six weeks period to submit Form N. A perusal of s 16 of the Act merely legislated that the land administrator shall prepare and serve on each person interested in such land a notice in Form H. In it would be the written award. Nothing was included within the four walls of s 16 or in Form H that the land administer was under a duty to inform the appellant of the submission of Form N (see *Mohd Saperi Mohd Nasir lwn Pentadbir Tanah Daerah Alor Gajah* [1997] 5 MLJ 800). That being so the land administrator was blameless as it had complied with all the statutory requirements. C D E

[11] It was also not disputed that the respondent had sent copies of Form N on 6 August 2002 to the appellant albeit a week before the closing date. It was not denied that the respondent had not informed the appellant of the need to submit the impugned Form N within six weeks of the award. Instead of being grateful for this extra service of the respondent, the appellant had stretched its ingratitude by complaining that the respondent should have taken the extra step of informing it of the time factor. F

[12] To appreciate the complaint of the appellant a scrutiny of s 38 and Form N would not be inappropriate. With respect we were unable to identify even a single suggestion in that section that it was incumbent upon the land administrator to inform the appellant of the dateline of the impugned Form N. A thorough scrutiny of Form N itself bore the same fruits. The wordings of s 38 and Form N were crystal clear in that the onus was on the appellant to do the needful, and for the land administrator to comply with the directions of the appellant, after having received the completed form. G H

[13] A perusal of Form N showed that even if the land administrator had not written on the covering letter, informing the appellant of the time frame, the instructions in the received form had all the necessary information. The relevant portion in that form reads: I

> 5. In accordance with subsection 38(1) of the Land Acquisition Act 1960, I hereby require you to refer the matter to the Court for its determination.
>
> Dated this……..day of……19….

.....

Signature of the applicant

[14] A cursory glance of the provision of s 38(1) as printed in the supplied Form N, whether by an employee of the appellant or a more qualified person, would have alerted that reader of the statutory requirements. Instead here, the appellant was nonchalant, and had preferred to wait for the valuation report, which came on 18 September 2002, about a month after the expiry date of the objection date. Either the appellant was just too indolent to read the contents of the form, or after reading it and being overly confident, had ignored it. Our very sentiment could also be found in the written judgment of the High Court judge which reads:

> Apparently the applicant having been served with Form H and subsequently Form N with the instruction to return them to the respondent did nothing until a few months later... On the facts laid before the court I can find no reason to fault the respondent for the inability of the applicant to file form N on time. It was the applicant themselves who had been guilty of indolence and perhaps indifference too. This conduct of the applicant to my mind had disentitled them to any indulgence that would warrant the court to exercise its discretion to tamper the rigidity of the law.

[15] With s 38(1) mentioned in all its clarity, to affirm and submit that the appellant only knew of that section after obtaining solicitor's advice was a truth twisted, much to our dissatisfaction. As regards the evidence, at p 65 Rekod Rayuan the appellant had affirmed an affidavit (paras 19.9–19.11) stating the following:

> 19.9 Subsequently on or about mid December 2002, the applicant through its agent MP Evans (M) Sdn Bhd had contacted its solicitors Messrs Presgrave & Matthews and forwarded a copy of the Valuation Report and requested its solicitor to obtain a hearing date for the appeal proceedings against the compensation award;
>
> 19.10 It was only at that time the applicant came to know that it was required to file Form N together with the deposit of RM3,000 with the respondent for an appeal against the award to be heard.

[16] To make matters worse for itself, the appellant's written submission reads as follows:

> At the material time, the applicant was not represented by solicitors and was also *not aware of the provisions of s 38(3)(a)*...
>
> As such, the appellant's failure to file the appeal by submitting Form N was also due to a genuine mistake that the appeal proceedings had been commenced and *ignorance as to the provisions of the Land Acquisition Act 1960*. (Emphasis added.)

[17] The appellant's nonchalant behaviour was reflected again when it merely obtained legal advice sometime in December 2002 ie three months after receiving the valuation report.

[18] A perusal of the above complaints, regarding the failure of the land administrator in not informing the appellant of the dateline, also was a bare

complaint. They were not beefed up by claims in the like that as a consequence of the respondent's failure to inform the appellant of the dateline there was delay on the appellant's part to file Form N. Surely mere complaints of not being informed of the dateline could not fall within the periphery of 'special circumstances'.

[19] It must be emphasized that this was no ordinary appellant. It was a company that had been incorporated in the United Kingdom, having MP Evans (M) Sdn Bhd as its agent in Malaysia, and an established and reputable legal firm to boot, to represent it in court. It was not the run of the mill simple minded villager, who could not appreciate why and how his ancestral land had been taken away, but a sophisticated globe trotting company with the resources to acquire professional advice at the snap of its hypothetical fingers.

[20] Evidentially too, the appellant's representative who attended the inquiry was not a mere clerk or a typist in the appellant's employment, but its very own estate manager. No one who has risen to the ranks of an estate manager of an international company could be said to be short of intelligence let alone experience. It was his duty to advise his company as to the next step to be undertaken, and not, on account of his own inadequacies, to pass the blame on the respondent who was not duty bound to help out. The existence of a rule, that ignorance of the law does not excuse, did not help the appellant's predicament either.

[21] The appellant had canvassed that the award of RM898,500 had caused it undue hardship whence a higher award should have been ordered. We were unwilling to accept the argument that a difference in valuation made by the Government's valuer and a private one that had caused undue hardship to the appellant, qualified as special circumstance. This argument was difficult to appreciate as it was just a straight forward financial dissatisfaction. It would be unlike, say, the scenario where a poorly compensated settler who was uprooted, had to start all over again somewhere else, where landed property would be exorbitantly expensive, with jobs being scarce for persons of his education and background.

[22] In the course of the hearing the appellant had submitted that there was a real likelihood of injurious affection to the remaining land. By not taking into account injurious affection, and to award adequate compensation, it had resulted in the contravention of art 13 of the Federal Constitution. This Article has two clauses and they read:

> (1) No person shall be deprived of property save in accordance with law.
>
> No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[23] The submission of the appellant could be mischievous, as, promulgated in the above article are two important principles, namely that any deprivation of property has to be in accordance with law, with that law providing for adequate compensation. So, which clause was being adverted to by the appellant? Taking one clause at a time, where had the respondent failed, that could be said to have contravened art 13(1)? Not only did the respondent adhere to the law to the hilt here, but had even done

some public relation's chores, when it had sent Form N to the appellant without being asked, or duty bound to do so. Taking the matter a step further we do not think the appellants could invoke art 13(2) merely on the basis of complaint of want of adequacy of compensation. The promulgation of cl 2 was to deal with the constitutional standard and requirement of expropriatory law (*Ting King Yii @ Ting King Yu & 17 Ors v Minister for Resource Planning & Anor* [1994] 4 CLJ 435; *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35). Since the appellant had not challenged the constitutionality of the Act it is safe to say that the appellant was only invoking art 13(1) in its submission.

[24] The respondent was never proven to have behaved in anyway that could be said to have contributed to the appellants not filing Form N on time. See *Lai Tai v The Collector of Land Revenue* [1960] MLJ 82 where Adams J had occasion to state (at p 84):

> With, this I most respectfully agree. It is impossible to lay down any definition of special circumstances. All that can be done is to look at the circumstances of each case and see whether the applicant was in any way to blame for her failure to apply to the Collector within proper time and if not whether the circumstances which prevented her from so doing were special and whether the respondent has by his behaviour raised any 'equity' against himself; that is to say contributed in any way to the causes which caused the applicant not to apply in due time.

[25] To reflect on some of the main issues submitted by the appellant our findings were that:

(i) there was no confusion on our part that it was the bounden responsibility of the appellant to file the statutory Form N on time ie within six weeks of the meting of the land administrator's award;

(ii) even though in the course of the appeal attempts were made to convince us that the appellant was unaware of the legal and statutory requirements that submission was unacceptable. Instead of approaching that 'ignorance of the law' concept in an apologetic and refined manner, it had instead indulged in the blame game;

(iii) the respondent was under no statutory duty to inform the appellant of the filing of Form N and its dateline;

(iv) the respondent was blameless in its conduct, and had in fact undertaken the extra effort of posting the forms to the appellant, but regretfully had received brickbats in return;

(v) there was nothing in the behaviour of the respondent that could be construed as 'inequitable', and which had caused the delay in the filing of that impugned form by the appellant;

(vi) mere difference of opinion by the Government and the appellant's private valuer, as regards the value of the land in the circumstances of this case, was not a special circumstance; and lastly

(vii) the undisguised indolence and nonchalance on the part of the appellant was too overwhelming to deserve even an ounce of the court's sympathy.

[26] Having considered the submissions of both parties in their entirety, we were unconvinced that the appellant had successfully established a case that deserved the exercising of the court's discretion. We therefore had dismissed the appeal with costs.

[27] My brothers Justice Dato' James Foong and Justice Datuk Wira Low Hop Bing have read the draft copy of this judgment and agreed with it.

Appeal dismissed.

Reported by Brendan Navin Siva